REMARKS

In response to the Office Action dated December 18, 2007, Applicant respectfully requests reconsideration and withdrawal of the rejections of claims 70-81. The allowance of claims 22-27, 29-34, 41-46 and 59-68, and the indication that claims 82-84 contain allowable subject matter, is noted with appreciation.

Claims 70, 71, 73, 74, 76, 77, 79 and 80 were rejected under 35 U.S.C. § 103, on the basis of selected pages from the *Adobe Photoshop 6.0 User Guide* (identified as "Adobe Systems, Inc."), in view of the Beretta patent (U.S. 5,254,978). Claims 72, 75, 78 and 81 were rejected under 35 U.S.C. §103 on the basis of the Adobe Systems, Inc. reference and the Beretta patent, in view of screen shots depicting the color selector palette for Microsoft Word 2000. For the reasons presented hereinafter, it is respectfully submitted that the references do not disclose the subject matter recited in the rejected claims, whether considered individually or in combination, and therefore do not support the rejections.

Independent claim 70 recites a method for producing a color palette, which includes the first step of placing blends of non web-safe chromatic colors in a first contiguous grouping within the palette. In connection with this claimed feature, the Office Action refers to the Adobe Systems, Inc. reference at pages 330-331, under the headings "Generating A Color Table" and "Mac OS." The Office Action states that these portions of the reference disclose the ability to create a color table with a palette or set of colors that are optimized for the Mac or Windows operating systems. The Office Action goes on to state that "such colors are interpreted as non web-safe colors since such colors are not consistent across different operating platforms . . ."

It is respectfully submitted that this interpretation is not supported by the reference, when viewed in the context of the ordinary level of skill in the art.

The section of the reference labeled "Generating A Color Table" (page 330) generally describes the options that are available to a user for selecting a color palette. The set of options that appear to be most relevant to the rejection are identified as "fixed options," in which the user can select a set of constant colors by choosing one of a predefined set of tables. This section of the reference does not contain any discussion indicating whether the colors in the various options are web-safe or non web-safe.

The passages on page 331 of the reference describe the various options that can be selected by the user. The Office Action refers to the option labeled "Mac OS." The description of this option states that the user selects the default 8-bit (256-color) color table provided by the Mac OS system. The reference states that this color table "is based on a uniform sampling of RGB colors." It is respectfully submitted that the interpretation proffered in the Office Action, namely that these colors are interpreted to be non web-safe colors, is not supported by the reference, in view of the ordinary level of skill in the art.

More particularly, the standard 256-color palette that is provided with the Mac or Windows operating system comprises both non web-safe and web-safe colors. Submitted herewith is a copy of a web page from the website Lynda.com, describing a browser-safe palette. Referring to page 3 of the printout, the third paragraph under the heading "What Is The Brower-Safe Palette?" states that the browser-safe palette only contains 216 colors out of a possible 256. The remaining 40 colors vary in the Mac and Windows operating systems, and are therefore eliminated from the

browser-safe palette. In other words, in the standard 256-color palette provided in the Mac and Windows operating systems that is based on a uniform sampling of RGB colors, 216 of these colors are web-safe colors, and the remaining 40 colors are non web-safe colors.

Accordingly, it is respectfully submitted that a person of ordinary skill in the art would understand that the 256-color table described in the Adobe Systems, Inc. reference comprises a combination of both web-safe and non web-safe colors. An interpretation that this passage refers to only non web-safe colors, as is apparently being done in the Office Action, is neither supported by the reference itself, nor the ordinary level of skill in the art.

Furthermore, the reference's description of a color table containing both web-safe and non web-safe colors does not contain any indication of *how* to arrange those colors within the color table, or in a palette derived from the color table. Specifically, it does not disclose that the non web-safe colors should be arranged in a contiguous grouping within the palette as alleged in the Office Action. As noted in the Office Action, the Adobe Systems, Inc. reference discloses the ability to sort the colors in the color table by hue, luminance, or popularity. When the table is sorted according to these criteria, the non web-safe colors will be interspersed among the web-safe colors. There is no suggestion in the reference to group the non web-safe colors in a contiguous manner, i.e., separately from the web-safe colors.

Claim 70 recites the second step of placing web-safe chromatic colors, including blends created from these colors, in a second contiguous grouping within the palette. In connection with this claimed feature, the Office Action refers, in particular, to the "Web" option described on page 331 of the Adobe Systems, Inc.

reference. This passage in the reference describes a 216 color table, that is identified as a web-safe palette (consistent with the above-noted discussion in the accompanying article from Lynda.com). It is respectfully submitted that this passage does not suggest the claimed subject matter. Specifically, the "Web" palette described in the Adobe Systems, Inc. reference is a <u>different</u> palette from the "Mac OS" palette, discussed previously. The "Web" palette comprises only web-safe colors. In contrast, claim 70 recites a palette that comprises a combination of <u>both</u> web-safe and non web-safe colors, in respective contiguous groupings within the palette. It is respectfully submitted that the two distinct palettes that are described in the Adobe Systems, Inc. reference cannot be interpreted to suggest the palette recited in claim 70. Pursuant to the teachings of the reference, the user can select a palette that contains only web-safe colors (the "Web" palette) or a palette that contains both web-safe and non web-safe colors (e.g., the "Mac OS" palette). With respect to this latter palette, the reference does not disclose that the web-safe colors and the non web-safe colors are placed in respective contiguous groupings within the palette (in contrast to being interspersed with one another). Accordingly, it is respectfully submitted that the Adobe Systems, Inc. reference does not disclose the subject matter that is alleged in the Office Action.

In this regard, page 4 of the Office Action acknowledges that "neither Adobe Systems, Inc. nor Beretta explicitly disclose creating two specific contiguous groups of colors, one for non web-safe and a second for web-safe colors as claimed." The Office Action goes on to allege, however, that it would be obvious to implement such groupings of web-safe and non web-safe colors in a palette, with reference to column 1, lines 40-51 of the Beretta patent. This portion of the patent refers to color

selection systems that allow users to select one color at a time. Noting that these systems do not enable the user to focus on the relationship among colors, the patent states:

> These color selection systems ignore well-known principles of color perception theory that human perception of color is influenced by the effect of adjacent colors, the surround against which a color is viewed, and the illumination under which a color is viewed.

It is respectfully submitted that this passage, particularly the sentence quoted above, has nothing to do with the arrangement of colors in a color palette. Rather, it refers to the fact that a human's perception of color is affected by the colors that surround it. The same color might be perceived as two different colors, depending upon the colors that are adjacent to it. For example, a given shade of green may be perceived as being yellowish when it appears adjacent to the color blue, but be perceived as bluish when adjacent to the color yellow. For a demonstration of this effect, reference is made to the website www.echalk.co.uk/amusements/ opticalillusions/illusions.htm.

It is respectfully submitted that the cited passage in the Beretta patent does not discuss, nor otherwise have anything to do with the differences between web-safe and non web-safe colors. The reference does not suggest that a human's *perception* of color is influenced on the basis of whether that color is a web-safe color or a non web-safe color. More significantly, it does not suggest that these two different categories of colors should be arranged in different respective contiguous groupings in a color palette. Any interpretation of the passage to suggest such a concept can only be based upon knowledge of Applicant's disclosure, and not on the teachings of the reference itself.

In view of the foregoing, it is respectfully submitted that the Adobe Systems, Inc. reference and the Beretta patent do not suggest the subject matter of claim 70 to a person of ordinary skill in the art, whether those references are considered individually or in combination. For at least these same reasons, the subject matter of independent claim 76, as well as dependent claims 71, 73, 74, 77, 79 and 80, is not suggested by these references.

Furthermore, it is respectfully submitted that the screen shots of the color selector palette for Microsoft Word 2000, applied in the rejection of claims 72, 75, 78 and 81, does not overcome the above-noted differences between the claimed subject matter and the disclosures of the Adobe Systems, Inc. reference and the Beretta patent. These screen shots were relied upon as allegedly disclosing the creation of non web-safe blends from non web-safe chromatic colors via incremental changes in saturation and value. Applicant respectfully submits that these screen shots, by themselves, do not disclose this subject matter. Nevertheless, even if they can be interpreted to teach such a concept, they do not suggest the above-noted distinguishing features of the rejected claims.

Accordingly, it is respectfully submitted that all pending claims are patentably

distinct from the cited references. Reconsideration and withdrawal of the rejections

of claims 70-81, and allowance of all pending claims is respectfully requested.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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lynda.com » Non-Dithering Colors in Browsers

The Browser-Safe Web Palette

by Lynda Weinman

The Web-Safe Color Dilemma

You might have heard of the browser-safe palette, Netscape palette, 216 palette, Web palette, and/or 6x6x6 color cube. All these terms refer to the same set of colors, which this page will describe in detail.

A lot of people credit me with the browser-safe palette, but it's a misplaced honor (if you can call it that!). I do have the distinction of being the first author to identify and publish the colors - but I can't take credit for creating them.

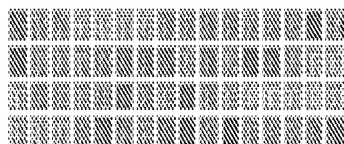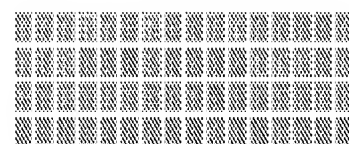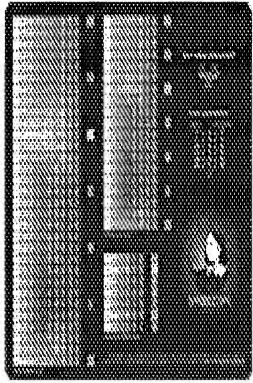| hue	value
The organization by hue puts these colors in order by color. View the full browser safe palette organized by hue »	The organization by value puts these colors in order of light, middle values and darks. View the full browser safe palette organized by value »

The browser-safe palette was developed by programmers with no design sense, I assure you. That's because a designer would have never picked these colors. Mostly, the palette contains far less light and

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with: Bruce Heavin
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dark colors than I wish it did, and is heavy on highly saturated colors and low on muted, tinted or toned colors.

The only reason to use the browser-safe palette is if you have a concern that your Web design work will be viewed from a 256 color (8-bit) computer system. When I published the browser-safe color chart in my first book, Designing Web Graphics, waaaayyy back in 1996, the MAJORITY of computer users had 8-bit video cards. Today, the minority have them, so the justification for using the browser-safe palette has diminished greatly if you are developing your site for users who have current computer systems.

There may be resurgence in the need for the browser-safe palette when designing for alternative online publishing devices, such as cell phones and PDAs. Those systems are still in 1-bit (black and white) or 8-bit color. Right now, very few people are designing their web sites to work on those systems, so the need for the browser-safe color palette is definitely downgraded to a mere shadow of its former glory.
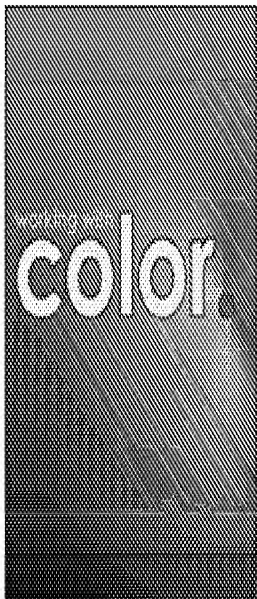
Is the Browser-Safe Palette Dead?
Though this might seem blasphemous to older readers of my books, or loyal website visitors, I believe it's safe to design without the palette. I believe this because so few computer users view the web in 256 colors anymore.

Keep in mind however, that many companies that hire designers and developers still feel it's a badge of Web design honor to work with these colors, so you might want to know how to use them if you have to.

At this point, the palette is built into Photoshop, Paint Shop Pro, Illustrator, Freehand, Fireworks, Dreamweaver, GoLive, and just about any professional Web design/development tool, so using it is fairly easy.

Conversely, there's no harm in using the browser-safe palette either. It simply limits your choices to 216 colors. Most people don't have a lot of color picking confidence, and working with limited color choices is easier. At this point, there's no right or wrong when it comes to which colors you pick, but more important to know how to combine colors in pleasing and effective ways.

Who would have thought that computers would mature as quickly as they have? In those early days of the web, only the professional designer had a system that supported thousands or millions of colors. Today, any

consumer with a Gateway or iMac is going to see all the colors you can throw their way. It's progress folks! Those of us who had to learn to design for the Web in the old days developed a skill that is fast becoming obsolete. So much for moving forward -- it's great liberation in my opinion!

What Is the Browser-Safe Palette?

For those of you unfamiliar with my books, they go into great detail about subjects which may be new to you, such as dithering, CLUTs, palettes, and 8-bit color. The palettes below are offered on the CD-ROM that comes with the book, and are available free here on the Web. Note: You do NOT have to buy, or promise to buy, my books to use these palettes. They are offered here freely with no strings attached.

The Browser-Safe Palette, as I so named it, is the actual palette that Mosaic, Netscape, and Internet Explorer use within their browsers. The palettes used by these browsers are slightly different on Macs and PCs. This palette is based on math, not beauty. I didn't and wouldn't have picked the colors in this palette, but Netscape, Mosaic, and Internet Explorer did, so....

The Browser-Safe Palette only contains 216 colors out of a possible 256. That is because the remaining 40 colors vary on Macs and PCs. By eliminating the 40 variable colors, this palette is optimized for cross-platform use.

The Browser-Safe Palette should not be used to remap color photographs. It is better to use an adaptive palette (with no dithering, if possible), and let the end-browser do any additional dithering. I have a test page which proves this point.

The Browser-Safe Palette is useful for flat-color illustrations, logos with flat-color, and areas in any image that have a lot of a single color. When a browser dithers flat colors it looks far more objectionable than when it dithers photographs. Look at this test page, which demonstrates this very point.

Since this palette was generated by math, not visual insightfulness, I hired my dear friend Joy Silverman who spent 60 hours of her life rearranging it so it might make sense to visual designers. There are two versions here: one organized by hue and one organized by value. You may copy either from these pages and distribute them freely to whomever might want to make better looking Web pages from them.

Special thanks to Bruce Heavin who spent hours with me at my house, going back and forth from my Mac to

my PC, trying to figure this out and succeeding!

If you would like the CLUT or these palettes, visit my <u>files</u> site and download them. Note: This CLUT is only useful for flat-color style illustrations, logos, and large areas of flat color. Use it to load into the Photoshop Swatches Palette for this purpose. Do not use it to remap color photos or photographic-style images.

Back to top ⏏